

The Federal Land Exchange Facilitation Act of 1988, referred to in subsec. (c)(2), is Pub. L. 100-409, Aug. 20, 1988, 102 Stat. 1086, as amended, which enacted section 1723 of this title, amended section 1716 of this title and sections 505a, 505b, and 521b of Title 16, Conservation, and enacted provisions set out as notes under sections 751 and 1716 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1701 of this title and Tables.

This chapter, referred to in subsec. (d), was in the original “this Act” and was translated as reading “this title”, meaning title II of Pub. L. 106-248, which enacted this chapter, to reflect the probable intent of Congress.

CHAPTER 42—RURAL WATER SUPPLY

SUBCHAPTER I—RECLAMATION RURAL WATER SUPPLY

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SUBCHAPTER I—RECLAMATION RURAL WATER SUPPLY

§ 2401. Definitions

In this subchapter:

(1) Construction

The term “construction” means the installation of infrastructure and the upgrading of existing facilities in locations in which the infrastructure or facilities are associated with the new infrastructure of a rural water project recommended by the Secretary pursuant to this subchapter.

(2) Federal reclamation law

The term “Federal reclamation law” means the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

(3) Indian

The term “Indian” means an individual who is a member of an Indian tribe.

(4) Indian tribe

The term “Indian tribe” has the meaning given the term in section 450b of title 25.

(5) Non-Federal project entity

The term “non-Federal project entity” means a State, regional, or local authority, Indian tribe or tribal organization, or other qualifying entity, such as a water conservation district, water conservancy district, or rural water district or association.

(6) Operations, maintenance, and replacement costs

(A) In general

The term “operations, maintenance, and replacement costs” means all costs for the operation of a rural water supply project that are necessary for the safe, efficient, and continued functioning of the project to produce the benefits described in a feasibility study.

(B) Inclusions

The term “operations, maintenance, and replacement costs” includes—

- (i) repairs of a routine nature that maintain a rural water supply project in a well kept condition;
- (ii) replacement of worn-out project elements; and
- (iii) rehabilitation activities necessary to bring a deteriorated project back to the original condition of the project.

(C) Exclusion

The term “operations, maintenance, and replacement costs” does not include construction costs.

(7) Program

The term “Program” means the rural water supply program carried out under section 2402 of this title.

(8) Reclamation States

The term “Reclamation States” means the States and areas referred to in the first section of the Act of June 17, 1902 (43 U.S.C. 391).

(9) Rural water supply project

(A) In general

The term “rural water supply project” means a project that is designed to serve a community or group of communities, each of which has a population of not more than 50,000 inhabitants, which may include Indian tribes and tribal organizations, dispersed homesites, or rural areas with domestic, industrial, municipal, and residential water.

(B) Inclusion

The term “rural water supply project” includes—

- (i) incidental noncommercial livestock watering and noncommercial irrigation of vegetation and small gardens of less than 1 acre; and
- (ii) a project to improve rural water infrastructure, including—
 - (I) pumps, pipes, wells, and other diversions;
 - (II) storage tanks and small impoundments;
 - (III) water treatment facilities for potable water supplies, including desalination facilities;

(IV) equipment and management tools for water conservation, groundwater recovery, and water recycling; and
(V) appurtenances.

(C) Exclusion

The term “rural water supply project” does not include—

- (i) commercial irrigation; or
- (ii) major impoundment structures.

(10) Secretary

The term “Secretary” means the Secretary of the Interior.

(11) Tribal organization

The term “tribal organization” means—

- (A) the recognized governing body of an Indian tribe; and
- (B) any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body or democratically elected by the adult members of the Indian community to be served by the organization.

(Pub. L. 109-451, title I, §102, Dec. 22, 2006, 120 Stat. 3346.)

REFERENCES IN TEXT

Act of June 17, 1902 (32 Stat. 388, chapter 1093), referred to in par. (2), is popularly known as the Reclamation Act and is classified generally to chapter 12 (§371 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 371 of this title and Tables.

SHORT TITLE

Pub. L. 109-451, §1(a), Dec. 22, 2006, 120 Stat. 3345, provided that: “This Act [enacting this chapter] may be cited as the ‘Rural Water Supply Act of 2006’.”

Pub. L. 109-451, title I, §101, Dec. 22, 2006, 120 Stat. 3346, provided that: “This title [enacting this subchapter] may be cited as the ‘Reclamation Rural Water Supply Act of 2006’.”

Pub. L. 109-451, title II, §201, Dec. 22, 2006, 120 Stat. 3356, provided that: “This title [enacting subchapter II of this chapter] may be cited as the ‘Twenty-First Century Water Works Act’.”

§ 2402. Rural water supply program

(a) In general

The Secretary, in cooperation with non-Federal project entities and consistent with this subchapter, may carry out a rural water supply program in Reclamation States to—

- (1) investigate and identify opportunities to ensure safe and adequate rural water supply projects for domestic, municipal, and industrial use in small communities and rural areas of the Reclamation States;
- (2) plan the design and construction, through the conduct of appraisal investigations and feasibility studies, of rural water supply projects in Reclamation States; and
- (3) oversee, as appropriate, the construction of rural water supply projects in Reclamation States that are recommended by the Secretary in a feasibility report developed pursuant to section 2405 of this title and subsequently authorized by Congress.

(b) Non-Federal project entity

Any activity carried out under this subchapter shall be carried out in cooperation with a quali-

fying non-Federal project entity, consistent with this subchapter.

(c) Eligibility criteria

Not later than 1 year after December 22, 2006, the Secretary shall, consistent with this subchapter, develop and publish in the Federal Register criteria for—

- (1) determining the eligibility of a rural community for assistance under the Program; and
- (2) prioritizing requests for assistance under the Program.

(d) Factors

The criteria developed under subsection (c) shall take into account such factors as whether—

- (1) a rural water supply project—
 - (A) serves—
 - (i) rural areas and small communities; or
 - (ii) Indian tribes; or
 - (B) promotes and applies a regional or watershed perspective to water resources management;
- (2) there is an urgent and compelling need for a rural water supply project that would—
 - (A) improve the health or aesthetic quality of water;
 - (B) result in continuous, measurable, and significant water quality benefits; or
 - (C) address current or future water supply needs;
- (3) a rural water supply project helps meet applicable requirements established by law; and
- (4) a rural water supply project is cost effective.

(e) Inclusions

The Secretary may include—

- (1) to the extent that connection provides a reliable water supply, a connection to pre-existing infrastructure (including impoundments and conveyance channels) as part of a rural water supply project; and
- (2) notwithstanding the limitation on population under section 2401(9)(A) of this title, a town or community with a population in excess of 50,000 inhabitants in an area served by a rural water supply project if, at the discretion of the Secretary, the town or community is considered to be a critical partner in the rural supply project.

(Pub. L. 109-451, title I, §103, Dec. 22, 2006, 120 Stat. 3347.)

§ 2403. Rural water programs assessment

(a) In general

In consultation with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Director of the Indian Health Service, the Secretary of Housing and Urban Development, and the Secretary of the Army, the Secretary shall develop an assessment of—

- (1) the status of all rural water supply projects under the jurisdiction of the Secretary authorized but not completed prior to December 22, 2006, including appropriation

amounts, the phase of development, total anticipated costs, and obstacles to completion;

(2) the current plan (including projected financial and workforce requirements) for the completion of the projects identified in paragraph (1) within the time frames established under the provisions of law authorizing the projects or the final engineering reports for the projects;

(3) the demand for new rural water supply projects;

(4) rural water programs within other agencies and a description of the extent to which those programs provide support for rural water supply projects and water treatment programs in Reclamation States, including an assessment of the requirements, funding levels, and conditions of eligibility for the programs assessed;

(5) the extent of the demand that the Secretary can meet with the Program;

(6) how the Program will complement authorities already within the jurisdiction of the Secretary and the heads of the agencies with whom the Secretary consults; and

(7) improvements that can be made to coordinate and integrate the authorities of the agencies with programs evaluated under paragraph (4), including any recommendations to consolidate some or all of the activities of the agencies with respect to rural water supply.

(b) Consultation with States

Before finalizing the assessment developed under subsection (a), the Secretary shall solicit comments from States with identified rural water needs.

(c) Report

Not later than 2 years after December 22, 2006, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a detailed report on the assessment conducted under subsection (a).

(Pub. L. 109-451, title I, §104, Dec. 22, 2006, 120 Stat. 3348.)

§ 2404. Appraisal investigations

(a) In general

On request of a non-Federal project entity with respect to a proposed rural water supply project that meets the eligibility criteria published under section 2402(c) of this title and subject to the availability of appropriations, the Secretary may—

(1) receive and review an appraisal investigation that is—

(A) developed by the non-Federal project entity, with or without support from the Secretary; and

(B) submitted to the Secretary by the non-Federal project entity;

(2) conduct an appraisal investigation; or

(3) provide a grant to, or enter into a cooperative agreement with, the non-Federal project entity to conduct an appraisal investigation, if the Secretary determines that—

(A) the non-Federal project entity is qualified to complete the appraisal investigation

in accordance with the criteria published under section 2402(c) of this title; and

(B) using the non-Federal project entity to conduct the appraisal investigation is a cost-effective alternative for completing the appraisal investigation.

(b) Deadline

An appraisal investigation conducted under subsection (a) shall be scheduled for completion not later than 2 years after the date on which the appraisal investigation is initiated.

(c) Appraisal report

In accordance with subsection (f), after an appraisal investigation is submitted to the Secretary under subsection (a)(1) or completed under paragraph (2) or (3) of subsection (a), the Secretary shall prepare an appraisal report that—

(1) considers—

(A) whether the project meets—

(i) the appraisal criteria developed under subsection (d); and

(ii) the eligibility criteria developed under section 2402(c) of this title;

(B) whether viable water supplies and water rights exist to supply the project, including all practicable water sources such as lower quality waters, nonpotable waters, and water reuse-based water supplies;

(C) whether the project has a positive effect on public health and safety;

(D) whether the project will meet water demand, including projected future needs;

(E) the extent to which the project provides environmental benefits, including source water protection;

(F) whether the project applies a regional or watershed perspective and promotes benefits in the region in which the project is carried out;

(G) whether the project—

(i)(I) implements an integrated resources management approach; or

(II) enhances water management flexibility, including providing for—

(aa) local control to manage water supplies under varying water supply conditions; and

(bb) participation in water banking and markets for domestic and environmental purposes; and

(ii) promotes long-term protection of water supplies;

(H) preliminary cost estimates for the project; and

(I) whether the non-Federal project entity has the capability to pay 100 percent of the costs associated with the operations, maintenance, and replacement of the facilities constructed or developed as part of the rural water supply project; and

(2) provides recommendations on whether a feasibility study should be initiated under section 2405(a) of this title.

(d) Appraisal criteria

(1) In general

Not later than 1 year after December 22, 2006, the Secretary shall promulgate criteria

(including appraisal factors listed under subsection (c)) against which the appraisal investigations shall be assessed for completeness and appropriateness for a feasibility study.

(2) Inclusions

To minimize the cost of a rural water supply project to a non-Federal project entity, the Secretary shall include in the criteria methods to scale the level of effort needed to complete the appraisal investigation relative to the total size and cost of the proposed rural water supply project.

(e) Review of appraisal investigation

(1) In general

Not later than 90 days after the date of submission of an appraisal investigation under paragraph (1) or (3) of subsection (a), the Secretary shall provide to the non-Federal entity that conducted the investigation a determination of whether the investigation has included the information necessary to determine whether the proposed rural water supply project satisfies the criteria promulgated under subsection (d).

(2) No satisfaction of criteria

If the Secretary determines that the appraisal investigation submitted by a non-Federal entity does not satisfy the criteria promulgated under subsection (d), the Secretary shall inform the non-Federal entity of the reasons why the appraisal investigation is deficient.

(3) Responsibility of Secretary

If an appraisal investigation as first submitted by a non-Federal entity does not provide all necessary information, as defined by the Secretary, the Secretary shall have no obligation to conduct further analysis until the non-Federal project entity submitting the appraisal study conducts additional investigation and resubmits the appraisal investigation under this subsection.

(f) Appraisal report

Once the Secretary has determined that an investigation provides the information necessary under subsection (e), the Secretary shall—

- (1) complete the appraisal report required under subsection (c);
- (2) make available to the public, on request, the appraisal report prepared under this subchapter; and
- (3) promptly publish in the Federal Register a notice of the availability of the results.

(g) Costs

(1) Federal share

The Federal share of an appraisal investigation conducted under subsection (a) shall be 100 percent of the total cost of the appraisal investigation, up to \$200,000.

(2) Non-Federal share

(A) In general

Except as provided in subparagraph (B), if the cost of conducting an appraisal investigation is more than \$200,000, the non-Federal share of the costs in excess of \$200,000 shall be 50 percent.

(B) Exception

The Secretary may reduce the non-Federal share required under subparagraph (A) if the Secretary determines that there is an overwhelming Federal interest in the appraisal investigation.

(C) Form

The non-Federal share under subparagraph (A) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the appraisal investigation.

(h) Consultation; identification of funding sources

In conducting an appraisal investigation under subsection (a)(2), the Secretary shall—

- (1) consult and cooperate with the non-Federal project entity and appropriate State, tribal, regional, and local authorities;
- (2) consult with the heads of appropriate Federal agencies to—
 - (A) ensure that the proposed rural water supply project does not duplicate a project carried out under the authority of the agency head; and
 - (B) if a duplicate project is being carried out, identify the authority under which the duplicate project is being carried out; and
- (3) identify what funding sources are available for the proposed rural water supply project.

(Pub. L. 109-451, title I, § 105, Dec. 22, 2006, 120 Stat. 3349.)

§ 2405. Feasibility studies

(a) In general

On completion of an appraisal report under section 2404(c) of this title that recommends undertaking a feasibility study and subject to the availability of appropriations, the Secretary shall—

- (1) in cooperation with a non-Federal project entity, carry out a study to determine the feasibility of the proposed rural water supply project;
- (2) receive and review a feasibility study that is—
 - (A) developed by the non-Federal project entity, with or without support from the Secretary; and
 - (B) submitted to the Secretary by the non-Federal project entity; or

(3)(A) provide a grant to, or enter into a cooperative agreement with, a non-Federal project entity to conduct a feasibility study, for submission to the Secretary, if the Secretary determines that—

- (i) the non-Federal entity is qualified to complete the feasibility study in accordance with the criteria promulgated under subsection (d); and
- (ii) using the non-Federal project entity to conduct the feasibility study is a cost-effective alternative for completing the appraisal investigation; or

(B) if the Secretary determines not to provide a grant to, or enter into a cooperative

agreement with, a non-Federal project entity under subparagraph (A), provide to the non-Federal project entity notice of the determination, including an explanation of the reason for the determination.

(b) Review of non-Federal feasibility studies

(1) In general

In conducting a review of a feasibility study submitted under paragraph (2) or (3) of subsection (a), the Secretary shall—

(A) in accordance with the feasibility factors described in subsection (c) and the criteria promulgated under subsection (d), assess the completeness of the feasibility study; and

(B) if the Secretary determines that a feasibility study is not complete, notify the non-Federal entity of the determination.

(2) Revisions

If the Secretary determines under paragraph (1)(B) that a feasibility study is not complete, the non-Federal entity shall pay any costs associated with revising the feasibility study.

(c) Feasibility factors

Feasibility studies authorized or reviewed under this subchapter shall include an assessment of—

(1) near- and long-term water demand in the area to be served by the rural water supply project;

(2) advancement of public health and safety of any existing rural water supply project and other benefits of the proposed rural water supply project;

(3) alternative new water supplies in the study area, including any opportunities to treat and use low-quality water, nonpotable water, water reuse-based supplies, and brackish and saline waters through innovative and economically viable treatment technologies;

(4) environmental quality and source water protection issues related to the rural water supply project;

(5) innovative opportunities for water conservation in the study area to reduce water use and water system costs, including—

(A) nonstructural approaches to reduce the need for the project; and

(B) demonstration technologies;

(6) the extent to which the project and alternatives take advantage of economic incentives and the use of market-based mechanisms;

(7)(A) the construction costs and projected operations, maintenance, and replacement costs of all alternatives; and

(B) the economic feasibility and lowest cost method of obtaining the desired results of each alternative, taking into account the Federal cost-share;

(8) the availability of guaranteed loans for a proposed rural water supply project;

(9) the financial capability of the non-Federal project entity to pay the non-Federal project entity's proportionate share of the design and construction costs and 100 percent of operations, maintenance, and replacement costs, including the allocation of costs to each non-Federal project entity in the case of multiple entities;

(10) whether the non-Federal project entity has developed an operations, management, and replacement plan to assist the non-Federal project entity in establishing rates and fees for beneficiaries of the rural water supply project that includes a schedule identifying the annual operations, maintenance, and replacement costs that should be allocated to each non-Federal entity participating in the project;

(11)(A) the non-Federal project entity administrative organization that would implement construction, operations, maintenance, and replacement activities; and

(B) the fiscal, administrative, and operational controls to be implemented to manage the project;

(12) the extent to which assistance for rural water supply is available under other Federal authorities;

(13) the engineering, environmental, and economic activities to be undertaken to carry out the proposed rural water supply project;

(14) the extent to which the project involves partnerships with other State, local, or tribal governments or Federal entities; and

(15) in the case of a project intended for Indian tribes and tribal organizations, the extent to which the project addresses the goal of economic self-sufficiency.

(d) Feasibility study criteria

(1) In general

Not later than 18 months after December 22, 2006, the Secretary shall promulgate criteria (including the feasibility factors listed under subsection (c)) under which the feasibility studies shall be assessed for completeness and appropriateness.

(2) Inclusions

The Secretary shall include in the criteria promulgated under paragraph (1) methods to scale the level of effort needed to complete the feasibility assessment relative to the total size and cost of the proposed rural water supply project and reduce total costs to non-Federal entities.

(e) Feasibility report

(1)¹ In general

After completion of appropriate feasibility studies for rural water supply projects that address the factors described in subsection (c) and the criteria promulgated under subsection (d), the Secretary shall—

(A) develop a feasibility report that includes—

(i) a recommendation of the Secretary on—

(I) whether the rural water supply project should be authorized for construction; and

(II) the appropriate non-Federal share of construction costs, which shall be—

(aa) at least 25 percent of the total construction costs; and

(bb) determined based on an analysis of the capability-to-pay information

¹ So in original. No par. (2) has been enacted.

considered under subsections (c)(9) and (f); and

(ii) if the Secretary recommends that the project should be authorized for construction—

(I) what amount of grants, loan guarantees, or combination of grants and loan guarantees should be used to provide the Federal cost share;

(II) a schedule that identifies the annual operations, maintenance, and replacement costs that should be allocated to each non-Federal entity participating in the rural water supply project; and

(III) an assessment of the financial capability of each non-Federal entity participating in the rural water supply project to pay the allocated annual operation, maintenance, and replacement costs for the rural water supply project;

(B) submit the report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives;

(C) make the report publicly available, along with associated study documents; and

(D) publish in the Federal Register a notice of the availability of the results.

(f) Capability-to-pay

(1) In general

In evaluating a proposed rural water supply project under this section, the Secretary shall—

(A) consider the financial capability of any non-Federal project entities participating in the rural water supply project to pay 25 percent or more of the capital construction costs of the rural water supply project; and

(B) recommend an appropriate Federal share and non-Federal share of the capital construction costs, as determined by the Secretary.

(2) Factors

In determining the financial capability of non-Federal project entities to pay for a rural water supply project under paragraph (1), the Secretary shall evaluate factors for the project area, relative to the State average, including—

(A) per capita income;

(B) median household income;

(C) the poverty rate;

(D) the ability of the non-Federal project entity to raise tax revenues or assess fees;

(E) the strength of the balance sheet of the non-Federal project entity; and

(F) the existing cost of water in the region.

(3) Indian tribes

In determining the capability-to-pay of Indian tribe project beneficiaries, the Secretary may consider deferring the collection of all or part of the non-Federal construction costs apportioned to Indian tribe project beneficiaries unless or until the Secretary determines that the Indian tribe project beneficiaries should pay—

(A) the costs allocated to the beneficiaries; or

(B) an appropriate portion of the costs.

(g) Cost-sharing requirement

(1) In general

Except as otherwise provided in this subsection, the Federal share of the cost of a feasibility study carried out under this section shall not exceed 50 percent of the study costs.

(2) Form

The non-Federal share under paragraph (1) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the study.

(3) Financial hardship

The Secretary may increase the Federal share of the costs of a feasibility study if the Secretary determines, based on a demonstration of financial hardship, that the non-Federal participant is unable to contribute at least 50 percent of the costs of the study.

(4) Larger communities

In conducting a feasibility study of a rural water supply system that includes a community with a population in excess of 50,000 inhabitants, the Secretary may require the non-Federal project entity to pay more than 50 percent of the costs of the study.

(h) Consultation and cooperation

In addition to the non-Federal project entity, the Secretary shall consult and cooperate with appropriate Federal, State, tribal, regional, and local authorities during the conduct of each feasibility assessment and development of the feasibility report conducted under this subchapter.

(Pub. L. 109-451, title I, §106, Dec. 22, 2006, 120 Stat. 3351.)

§ 2406. Miscellaneous

(a) Authority of Secretary

The Secretary may enter into contracts, financial assistance agreements, and such other agreements, and promulgate such regulations, as are necessary to carry out this subchapter.

(b) Transfer of projects

Nothing in this subchapter authorizes the transfer of pre-existing facilities or pre-existing components of any water system from Federal to private ownership or from private to Federal ownership.

(c) Federal reclamation law

Nothing in this subchapter supersedes or amends any Federal law associated with a project, or portion of a project, constructed under Federal reclamation law.

(d) Interagency coordination

The Secretary shall coordinate the Program carried out under this subchapter with existing Federal and State rural water and wastewater programs to facilitate the most efficient and effective solution to meeting the water needs of the non-Federal project sponsors.

(e) Multiple Indian tribes

In any case in which a contract is entered into with, or a grant is made, to¹ an organization to

¹ So in original. The comma probably should follow “to”.

perform services benefitting more than 1 Indian tribe under this subchapter, the approval of each such Indian tribe shall be a prerequisite to entering into the contract or making the grant.

(f) Ownership of facilities

Title to any facility planned, designed, and recommended for construction under this subchapter shall be held by the non-Federal project entity.

(g) Expedited procedures

If the Secretary determines that a community to be served by a proposed rural water supply project has urgent and compelling water needs, the Secretary shall, to the maximum extent practicable, expedite appraisal investigations and reports conducted under section 2404 of this title and feasibility studies and reports conducted under section 2405 of this title.

(h) Effect on State water law

(1) In general

Nothing in this subchapter preempts or affects State water law or an interstate compact governing water.

(2) Compliance required

The Secretary shall comply with State water laws in carrying out this subchapter.

(i) No additional requirements

Nothing in this subchapter requires a feasibility study for, or imposes any other additional requirements with respect to, rural water supply projects or programs that are authorized before December 22, 2006.

(Pub. L. 109-451, title I, § 107, Dec. 22, 2006, 120 Stat. 3355.)

§ 2407. Reports

Beginning in fiscal year 2007, and each fiscal year thereafter through fiscal year 2012, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives an annual report that describes the number and type of full-time equivalent positions in the Department of the Interior and the amount of overhead costs of the Department of the Interior that are allocated to carrying out this subchapter for the applicable fiscal year.

(Pub. L. 109-451, title I, § 108, Dec. 22, 2006, 120 Stat. 3356.)

§ 2408. Authorization of appropriations

(a) In general

There is authorized to be appropriated to carry out this subchapter \$15,000,000 for each of fiscal years 2007 through 2016, to remain available until expended.

(b) Rural water programs assessment

Of the amounts made available under subsection (a), not more than \$1,000,000 may be made available to carry out section 2403 of this title for each of fiscal years 2007 and 2008.

(c) Construction costs

No amounts made available under this section shall be used to pay construction costs associated with any rural water supply project.

(Pub. L. 109-451, title I, § 109, Dec. 22, 2006, 120 Stat. 3356.)

§ 2409. Termination of authority

The authority of the Secretary to carry out this subchapter terminates on September 30, 2016.

(Pub. L. 109-451, title I, § 110, Dec. 22, 2006, 120 Stat. 3356.)

SUBCHAPTER II—TWENTY-FIRST CENTURY WATER WORKS

§ 2421. Definitions

In this subchapter:

(1) Indian tribe

The term “Indian tribe” has the meaning given the term in section 450b of title 25.

(2) Lender

The term “lender” means—

(A) a non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulation¹ (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)); or

(B) a clean renewable energy bond lender (as defined in section 54(j)(2) of title 26 (as in effect on December 22, 2006)).

(3) Loan guarantee

The term “loan guarantee” has the meaning given the term “loan guarantee” in section 661a of title 2.

(4) Non-Federal borrower

The term “non-Federal borrower” means—

(A) a State (including a department, agency, or political subdivision of a State); or

(B) a conservancy district, irrigation district, canal company, water users’ association, Indian tribe, an agency created by interstate compact, or any other entity that has the capacity to contract with the United States under Federal reclamation law.

(5) Obligation

The term “obligation” means a loan or other debt obligation that is guaranteed under this section.

(6) Project

The term “project” means—

(A) a rural water supply project (as defined in section 2401(9) of this title);

(B) an extraordinary operation and maintenance activity for, or the rehabilitation or replacement of, a facility—

(i) that is authorized by Federal reclamation law and constructed by the United States under such law; or

(ii) in connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law; or

(C) an improvement to water infrastructure directly associated with a reclamation

¹ So in original. Probably should be “Regulations”.

project that, based on a determination of the Secretary—

- (i) improves water management; and
- (ii) fulfills other Federal goals.

(7) Secretary

The term “Secretary” means the Secretary of the Interior.

(Pub. L. 109–451, title II, §202, Dec. 22, 2006, 120 Stat. 3356.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in par. (2)(A), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

SHORT TITLE

This subchapter known as the “Twenty-First Century Water Works Act”, see Short Title note set out under section 2401 of this title.

§ 2422. Project eligibility

(a) Eligibility criteria

(1) In general

The Secretary shall develop and publish in the Federal Register criteria for determining the eligibility of a project for financial assistance under section 2423 of this title.

(2) Inclusions

Eligibility criteria shall include—

(A) submission of an application by the lender to the Secretary;

(B) demonstration of the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment;

(C) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to repay the project financing from user fees or other dedicated revenue sources;

(D) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to pay all operations, maintenance, and replacement costs of the project facilities; and

(E) such other criteria as the Secretary determines to be appropriate.

(b) Waiver

The Secretary may waive any of the criteria in subsection (a)(2) that the Secretary determines to be duplicative or rendered unnecessary because of an action already taken by the United States.

(c) Projects previously authorized

A project that was authorized for construction under Federal reclamation laws prior to December 22, 2006, shall be eligible for assistance under this subchapter, subject to the criteria established by the Secretary under subsection (a).

(d) Criteria for rural water supply projects

A rural water supply project that is determined to be feasible under section 2405 of this title is eligible for a loan guarantee under section 2423 of this title.

(Pub. L. 109–451, title II, §203, Dec. 22, 2006, 120 Stat. 3357.)

§ 2423. Loan guarantees

(a) Authority

Subject to the availability of appropriations, the Secretary may make available to lenders for a project meeting the eligibility criteria established in section 2422 of this title loan guarantees to supplement private-sector or lender financing for the project.

(b) Terms and limitations

(1) In general

Loan guarantees under this section for a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements as the Secretary determines to be appropriate to protect the financial interests of the United States.

(2) Amount

Loan guarantees by the Secretary shall not exceed an amount equal to 90 percent of the cost of the project that is the subject of the loan guarantee, as estimated at the time at which the loan guarantee is issued.

(3) Interest rate

An obligation shall bear interest at a rate that does not exceed a level that the Secretary determines to be appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks.

(4) Amortization

A loan guarantee under this section shall provide for complete amortization of the loan guarantee within not more than 40 years.

(5) Nonsubordination

An obligation shall be subject to the condition that the obligation is not subordinate to other financing.

(c) Prepayment and refinancing

Any prepayment or refinancing terms on a loan guarantee shall be negotiated between the non-Federal borrower and the lender with the consent of the Secretary.

(Pub. L. 109–451, title II, §204, Dec. 22, 2006, 120 Stat. 3358.)

§ 2424. Defaults

(a) Payments by Secretary

(1) In general

If a borrower defaults on the obligation, the holder of the loan guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

(2) Payment required

By such date as may be specified in the loan guarantee or related agreements, the Secretary shall pay to the holder of the loan guarantee the unpaid interest on, and unpaid principal of, the obligation with respect to which the borrower has defaulted, unless the Secretary finds that there was not default by the borrower in the payment of interest or principal or that the default has been remedied.

(3) Forbearance

Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the non-Federal borrower that may be agreed on by the parties to the obligation and approved by the Secretary.

(b) Subrogation**(1) In general**

If the Secretary makes a payment under subsection (a), the Secretary shall be subrogated to the rights of the recipient of the payment as specified in the loan guarantee or related agreements, including, as appropriate, the authority (notwithstanding any other provision of law) to—

(A) complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to the loan guarantee or related agreements; or

(B) permit the non-Federal borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines the purposes to be in the public interest.

(2) Superiority of rights

The rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreement, shall be superior to the rights of any other person with respect to the property.

(c) Payment of principal and interest by Secretary

With respect to any obligation guaranteed under this section, the Secretary may enter into a contract to pay, and pay, holders of the obligation, for and on behalf of the non-Federal borrower, from funds appropriated for that purpose, the principal and interest payments that become due and payable on the unpaid balance of the obligation if the Secretary finds that—

(1)(A) the non-Federal borrower is unable to meet the payments and is not in default;

(B) it is in the public interest to permit the non-Federal borrower to continue to pursue the purposes of the project; and

(C) the probable net benefit to the Federal Government in paying the principal and interest will be greater than that which would result in the event of a default;

(2) the amount of the payment that the Secretary is authorized to pay shall be no greater than the amount of principal and interest that the non-Federal borrower is obligated to pay under the agreement being guaranteed; and

(3) the borrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary.

(d) Action by Attorney General**(1) Notification**

If the non-Federal borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

(2) Recovery

On notification, the Attorney General shall take such action as is appropriate to recover the unpaid principal and interest due from—

(A) such assets of the defaulting non-Federal borrower as are associated with the obligation; or

(B) any other security pledged to secure the obligation.

(Pub. L. 109–451, title II, §205, Dec. 22, 2006, 120 Stat. 3358.)

§ 2425. Operations, maintenance, and replacement costs**(a) In general**

The non-Federal share of operations, maintenance, and replacement costs for a project receiving Federal assistance under this subchapter shall be 100 percent.

(b) Plan

On request of the non-Federal borrower, the Secretary may assist in the development of an operation, maintenance, and replacement plan to provide the necessary framework to assist the non-Federal borrower in establishing rates and fees for project beneficiaries.

(Pub. L. 109–451, title II, §206, Dec. 22, 2006, 120 Stat. 3360.)

§ 2426. Title to newly constructed facilities**(a) New projects and facilities**

All new projects or facilities constructed in accordance with this subchapter shall remain under the jurisdiction and control of the non-Federal borrower subject to the terms of the repayment agreement.

(b) Existing projects and facilities

Nothing in this subchapter affects the title of—

(1) reclamation projects authorized prior to December 22, 2006;

(2) works supplemental to existing reclamation projects; or

(3) works constructed to rehabilitate existing reclamation projects.

(Pub. L. 109–451, title II, §207, Dec. 22, 2006, 120 Stat. 3360.)

§ 2427. Water rights**(a) In general**

Nothing in this subchapter preempts or affects State water law or an interstate compact governing water.

(b) Compliance required

The Secretary shall comply with State water laws in carrying out this subchapter. Nothing in this subchapter affects or preempts State water law or an interstate compact governing water.

(Pub. L. 109–451, title II, §208, Dec. 22, 2006, 120 Stat. 3360.)

§ 2428. Interagency coordination and cooperation**(a) Consultation**

The Secretary shall consult with the Secretary of Agriculture before promulgating criteria with respect to financial appraisal functions and loan guarantee administration for activities carried out under this subchapter.

(b) Memorandum of agreement

The Secretary and the Secretary of Agriculture shall enter into a memorandum of agree-

ment providing for Department of Agriculture financial appraisal functions and loan guarantee administration for activities carried out under this subchapter.

(Pub. L. 109–451, title II, §209, Dec. 22, 2006, 120 Stat. 3360.)

§ 2429. Records; audits

(a) In general

A recipient of a loan guarantee shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

(b) Access

The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access, for the purpose of audit, to the records and other pertinent documents.

(Pub. L. 109–451, title II, §210, Dec. 22, 2006, 120 Stat. 3360.)

§ 2430. Full faith and credit

The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

(Pub. L. 109–451, title II, §211, Dec. 22, 2006, 120 Stat. 3360.)

§ 2431. Report

Not later than 1 year after the date on which the eligibility criteria are published in the Federal Register under section 2422(a) of this title, and every 2 years thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the implementation of the loan guarantee program under section 2423 of this title.

(Pub. L. 109–451, title II, §212, Dec. 22, 2006, 120 Stat. 3361.)

§ 2432. Effect on the reclamation laws

(a) Reclamation projects

Nothing in this subchapter supersedes or amends any Federal law associated with a

project, or a portion of a project, constructed under the reclamation laws.

(b) No new or supplemental benefits

Any assistance provided under this subchapter shall not—

(1) be considered to be a new or supplemental benefit for purposes of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.); or

(2) affect any contract in existence on December 22, 2006, that is executed under the reclamation laws.

(Pub. L. 109–451, title II, §213, Dec. 22, 2006, 120 Stat. 3361.)

REFERENCES IN TEXT

The Reclamation Reform Act of 1982, referred to in subsec. (b)(1), is title II of Pub. L. 97–293, Oct. 12, 1982, 96 Stat. 1263, which enacted subchapter I–A (§390aa et seq.) of chapter 12 of this title, amended sections 373a, 422e, 425b, and 485h of this title, and repealed section 383 of Title 25, Indians. For complete classification of this Act to the Code, see Tables.

§ 2433. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subchapter, to remain available until expended.

(Pub. L. 109–451, title II, §214, Dec. 22, 2006, 120 Stat. 3361.)

§ 2434. Termination of authority

(a) In general

Subject to subsection (b), the authority of the Secretary to carry out this subchapter terminates on the date that is 10 years after December 22, 2006.

(b) Exception

The termination of authority under subsection (a) shall have no effect on—

(1) any loans guaranteed by the United States under this subchapter; or

(2) the administration of any loan guaranteed under this subchapter before the effective date of the termination of authority.

(Pub. L. 109–451, title II, §215, Dec. 22, 2006, 120 Stat. 3361.)